

BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for Penalty )  
Relief of : )

**DAVID MICHAEL MELAMED, M.D.** )  
Certificate No. G-56161 )

No: 17-1996-59439


Respondent )

**DECISION**

The attached Proposed Decision is hereby adopted by the Division of Medical Quality as its  
Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on January 3, 2003.

IT IS SO ORDERED December 4, 2002

By:   
**RONALD WENDER, M.D.**  
Chair - Panel B  
Division of Medical Quality

BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of Petition for Penalty Relief  
of:

DAVID MICHAEL MELAMED  
10941 Strathmore Drive, Apt. #30  
Los Angeles, CA 90024

Physician's and Surgeon's  
Certificate No. G56161

Petitioner

Case No. 17-1996-59439

OAH No. L2002080765

**PROPOSED DECISION**

On October 31, 2002, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Alvin J. Korobkin, Deputy Attorney General, represented complainant.

Robert G. Wilson, Attorney At Law, represented petitioner.

The matter was submitted on October 31, 2002.

**FACTUAL FINDINGS**

1. On May 28, 2002, petitioner signed a Petition for Penalty Relief and submitted to the Medical Board of California (hereafter, "Board"). Petitioner sought to have his probation terminated.

2. On September 30, 1985, the Board issued Physician's and Surgeon's certificate No. G56161 to petitioner.

3. On October 20, 1999, the Board's Executive Director filed a second supplemental accusation against petitioner. It alleged that in his care and treatment of eight patients, petitioner committed gross negligence, repeated negligent acts, was incompetent, excessively prescribed, violated drug statutes, and prescribed without medical indication by prescribing large amounts of dilaudid over a period of up to five years. The accusation also alleged he created false medical records, was dishonest, and failed to maintain adequate and accurate patient records.

Petitioner and the Board entered into a Stipulated Settlement. Petitioner did not admit to the truth of the allegations but waived his right to defend against the allegations and agreed the Board could take disciplinary action against him for excessively prescribing controlled substances and violating drug statutes. The disciplinary order called for revocation of petitioner's license, stayed, and probation for a period of three years on conditions which included petitioner taking the P.A.C.E. prescribing course, having his practice monitored, a prohibition against treating patients with intractable pain or a history of abuse or addiction to controlled substances or dangerous drugs, taking an ethics course, payment of \$2,000.80 in costs and payment of monitoring costs, a prohibition against supervising physician's assistants, and the Board's standard terms and conditions. The Board adopted the Stipulated Settlement on May 16, 2000, and it became effective on June 15, 2000.

4. Based on the discipline imposed by the Board, petitioner entered into a Consent Order with the Department of Professional Regulation of the State of Illinois on November 21, 2000. Petitioner was and is licensed by the State of Illinois as a physician and surgeon. The order provided petitioner would be placed on probation for three years on condition, among others, that he take 40 hours of continuing medical education (CME) in the field of prescribing and dispensing medication in addition to his statutory requirement of CME.

Petitioner is also licensed in the State of Washington. On April 26, 2001, he entered into a stipulation with the State of Washington, Department of Health, Medical Quality Assurance Commission based on the disciplinary order of the Board. The agreed order required petitioner to comply with the terms of probation in California.

5. At the time the Board began its investigation into petitioner's activities, he was practicing medicine as a general practitioner. Between 1995 and 1998, petitioner did a residency at the University of Chicago in the field of dermatology. One of the conditions of probation required petitioner to have his practice monitored. In May 2000, petitioner began working for the Alpha Medical Group as a general practitioner and he selected Dr. Peter Tran, a board certified dermatologist, to act as his monitor. In a letter to the Board dated May 25, 2002, Dr. Tran wrote he acted as petitioner's probation monitor until September 2000, at which time petitioner joined his staff, and he had to relinquish his duties as probation monitor.

Dr. Tran supported petitioner's petition for reduction in penalty. He noted petitioner was deeply affected by the act of being placed on probation though he knew there was cause to do so. He believes it has had a profound influence in petitioner's approach to medicine.

He wrote he and petitioner have spoken numerous times about patient interactions, medical record-keeping, appropriate medications and prescriptions and his overall behavior. He has found petitioner to be extremely conscientious towards the treatment of his patients and spends the appropriate amount of time with each one, interacting with them in a friendly professional manner. Dr. Tran has found petitioner's prescriptions are accurate and medically indicated, and he has never observed any evidence of inappropriate, inaccurate or excessive prescribing. He has not seen petitioner prescribe any controlled substance which, in a dermatology practice, would not generally be prescribed anyway. He has seen petitioner refer any patients who he suspects of having a pattern of drug abuse or addiction, or who suffer from intractable pain, to him for evaluation and has never treated them himself. Dr. Tran indicated he has never seen any instance of incompetence or gross negligence in petitioner's work over the last two years. He noted petitioner maintained impeccable, detailed records and he has accepted guidance from others about maintaining records.

Dr. Tran believes petitioner has made significant strides towards rehabilitation since his probation began. He has seen petitioner read books on ethics and work toward improving the quality of his practice. He is impressed with the sincerity, earnestness, and conscientiousness of his approach toward patient care and professional behavior. He considers petitioner to be an excellent physician and an ethical man, and he has been rehabilitated. He felt petitioner should be permitted to practice medicine now without any restrictions.

6. Dr. Normal Solomon became petitioner's probation monitor in April 2001. He wrote a letter to the Board dated May 10, 2002 recommending the period of probation be shortened. He indicated petitioner has fulfilled all of the conditions of his probation in both letter and spirit. He has found petitioner responded well to their discussions of cases and seemed to enjoy them. He noted petitioner's attitude changed over time, from seeing himself as a victim who lost something, to someone who was privileged to practice medicine and fortunate to have the opportunity to provide fine care to his patients. He sees petitioner as enthusiastic about his challenges and opportunities but also aware of his responsibilities. He believes petitioner truly regrets the actions he took in the past, has shown remorse, and has changed his attitude and his behavior in a positive manner. He was not sure that continued probation would serve any additional useful purpose.

7. On July 29, 2002, petitioner attended a seven-hour medical ethics for physicians course. He took the P.A.C.E. three-day, 25-hour prescribing course in February 2001. He also attended a three-day course in prescribing controlled drugs offered by the Vanderbilt University Medical Center in November 2001.

8. Petitioner attended the University of Illinois College of Medicine and the Washington University School of Medicine, receiving his M.D. in 1983. He did a one-year internship at Case Western in general surgery but did not complete it. He became a general practitioner but became interested in health care economics. He attended Oxford for two years where he obtained a master's degree in economics. Thereafter, he did his residency in dermatology and developed an interest in skin disorders.

Presently, petitioner works for Dr. Tran in offices in Victorville and Barstow. He wants to sit for the certifying examination in dermatology but cannot take it until he has completed probation. That is one of the reasons petitioner filed this petition. He intends to remain in the field of dermatology and continue to work with Dr. Tran.

Petitioner submitted a letter in support of his petition. He pointed out he had completed all the terms of probation, and in addition, took an additional prescribing course at Vanderbilt, keeps current in his field by reading relevant journals every month, and attends seminars in the field of dermatology.

Petitioner wrote he had undertaken a great deal of self-examination. He asked himself how he got into the situation that led to the filing of the accusation, why he did what he did, and how he could prevent it from recurring. He believes he found the answers through education, discipline, and the strong support and guidance from Dr. Tran, Dr. Solomon, his pastor, and his probation supervisor. He feels he has replaced the behavior that led to wrongdoing with a determined sense of responsibility and renewed respect towards medicine, and he has made a commitment to himself to behave ethically and professionally to the best of his ability so that he can provide the finest care and treatment for every patient. He wrote he has learned to use caution, judiciousness, and the highest level of medical acumen when writing prescriptions knowing that he must not prescribe excessively. He promised he would never again treat patients suffering from chronic pain or symptoms of addiction and instead will refer such patients to specialists. He intends to remain mindful of the past and the choices he made, and he is confident the difficulties will not recur. He believes he has assembled a trusted network of supportive friends and colleagues to provide advice and direction. He indicated he has learned a great deal about himself and his profession through his experience with probation and will apply what he has learned for the remainder of his career. Petitioner feels he has accepted his punishment and its restrictions on his practice, turned the two-year period into one of intense rehabilitation, and further probation is not needed.

Petitioner testified at the hearing and reiterated his reasons why his petition should be granted. In addition to his desire to take the board certifying examination in dermatology, which he cannot do while he is on probation, petitioner testified another reason to have probation end early relates to the detrimental effect probation has on his ability to care for patients with insurance. He recognizes now he was not qualified to treat patients in chronic pain and should have referred them to specialists.

Petitioner testified Dr. Tran has read every chart and reviewed every prescription, and they have discussed each patient. Petitioner views him as a friend and a colleague, and expects the relationship to continue for many years.

9. Petitioner's testimony and his demeanor while testifying present a strong case for granting the petition. He is a person who has recognized his mistakes and sought to learn from them. He accepted responsibility for his conduct and took steps to prevent their repetition.

On the other hand, petitioner's misconduct—the excessive prescribing of Schedule II controlled substances—occurred over many years, in some instances, five years. His misconduct had serious consequences for his patients. He accepted a settlement that required him to serve three years probation, and under the circumstances, that was a reasonable, if not lenient penalty. Despite petitioner's praiseworthy efforts towards rehabilitation, he must be reminded of how serious his misconduct was and how he must continue to be vigilant so as not to repeat it.

Business and Professions Code section 2307 provides in part:

*... the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.*

Taking into account all the evidence and reasons offered by petitioner in support of his petition to terminate probation, that evidence does not outweigh the seriousness of the offense, and the short amount of time petitioner has served on probation to date. Accordingly, the petition should be denied.

#### LEGAL CONCLUSIONS

Cause to grant the petition of David Michael Melamed, M.D. for penalty relief by terminating probation was not established by reason of Finding 9.

#### ORDER

The petition of David Michael Melamed, M.D. for penalty relief by terminating probation is hereby denied.

DATED November 15, 2002



ALAN S. METH  
Administrative Law Judge  
Office of Administrative Hearings